

² The Board notes that appellant submitted additional following the May 3, 2018 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 6, 2017 appellant, then a 56-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on April 1, 2017 she injured her hands, arms, back, and knees pushing a mail dolly while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she stopped work on April 2, 2017, and had not yet returned.³

In a letter dated May 26, 2017, Dr. Eugene P. Lopez, Board-certified in orthopedic sports medicine and orthopedic surgery, indicated that appellant's physical examination revealed that she walked with an antalgic gait and had various deformities of her knee. He related that on July 23, 2014 the employing establishment offered her a modified assignment for limited duties which included sedentary work, and no physical requirements, due to her accepted injuries. Dr. Lopez further noted that on March 30, 2017 the employing establishment modified appellant's duties again to include physical tasks which had been previously restricted.

In a statement dated June 26, 2017, appellant indicated that on April 1, 2017 she was assigned new duties which included working the flats sequencing system (FSS) machine, prepping mail, removing dollies that weighed in excess of 270 pounds when empty and 690 pounds when full, and grooming mail converters. She noted that she was in a lot of pain all day due to these modified duties.

In a letter dated June 30, 2017, Dr. Lopez noted that appellant sustained employment-related injuries because of new job duties she was expected to perform. He indicated that her job duties required prepping mail, using dollies, loading containers, lifting greater than 20 pounds, reaching above her shoulders, fine manipulation, twisting, turning, bending, sitting, standing, and pushing and pulling. Dr. Lopez diagnosed employment-related bilateral knee osteoarthritis.

By development letter dated July 21, 2017, OWCP informed appellant that the evidence received was insufficient to establish her claim because the medical evidence of record neither provided a diagnosis of a medical condition, nor a physician's opinion as to how the alleged employment incident caused a diagnosed condition. It afforded her 30 days to submit the necessary evidence.

In an attending physician's report (Form CA-20) and accompanying letter dated August 2, 2017, Dr. Lopez indicated that appellant suffered a preexisting employment-related injury. He related that, based on x-rays, appellant had bilateral knee osteoarthritis and bilateral carpal tunnel syndrome aggravated by her repetitive job duties. Dr. Lopez noted that appellant had been

³ The record reflects that OWCP accepted an August 20, 2009 claim for carpal tunnel syndrome and bilateral leg osteoarthritis under OWCP File No. xxxxxx498. Appellant also filed a notice of recurrence on April 7, 2017 alleging a worsening of her accepted conditions under OWCP File No. xxxxxx498.

partially disabled since April 6, 2017. He indicated that appellant was able to resume light work with restrictions on April 6, 2017.

By decision dated August 24, 2017, OWCP denied appellant's claim finding that she had not met her burden of proof to establish that her diagnosed medical conditions were causally related to her accepted employment incident.

On October 3, 2017 appellant requested reconsideration of OWCP's August 24, 2017 decision.

With her request, appellant submitted a narrative report, dated September 20, 2017, from Dr. Florian Miranzadeh, Board-certified in family medicine and osteopathic manipulative medicine. Upon examination and review of appellant's medical record, Dr. Miranzadeh diagnosed bilateral arm and shoulder pain secondary to an employment-related injury on April 1, 2017. He related that appellant's medical history contained other diagnoses of bilateral carpal tunnel syndrome, back sprain, and bilateral knee osteoarthritis, but he indicated that he did not have enough information regarding these diagnoses. Dr. Miranzadeh noted that her mechanism of injury was consistent with her medical history and present condition.

By decision dated December 15, 2017, OWCP denied modification of its August 24, 2017 decision. It related that the evidence submitted was insufficient to modify the August 24, 2017 decision.

On April 13, 2018 appellant requested reconsideration of OWCP's December 15, 2017 decision. She submitted an electromyography (EMG) report dated April 10, 2017 from Dr. Manish Kapadia, a neurologist, along with her reconsideration request.

By decision dated May 3, 2018, OWCP found that the evidence of record was insufficient to warrant review of the merits of the claim as the evidence submitted was irrelevant or immaterial and thus had no bearing on the issue of causal relationship.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with a discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant.⁴

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁵ OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.⁶ To be entitled to a merit review of

⁴ 5 U.S.C. § 8128(a).

⁵ *Id.*

⁶ 20 C.F.R. § 10.606(b)(3).

an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.⁷ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.⁸

In support of a request for reconsideration, a claimant is not required to submit all evidence which may be necessary to discharge his or her burden of proof.⁹ He or she needs only to submit relevant, pertinent evidence not previously considered by OWCP.¹⁰ When reviewing an OWCP decision denying a merit review, the function of the Board is to determine whether OWCP properly applied the standards set forth at section 10.606(b)(3) to the claimant's application for reconsideration and any evidence submitted in support thereof.¹¹

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

The Board finds that appellant has not shown that OWCP erroneously applied or interpreted a specific point of law. Moreover, appellant has not advanced a relevant legal argument not previously considered. As such, she is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

In support of her April 13, 2018 reconsideration request, appellant submitted an EMG report dated April 10, 2017 from Dr. Kapadia. A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence, but she did not submit such evidence in this case.¹² The underlying issue in this case is whether appellant has provided sufficient evidence to meet her burden of proof to establish that her diagnosed medical conditions were causally related to her accepted work event. Diagnostic studies lack probative value as they do not address whether an employment incident caused a diagnosed condition.¹³ Dr. Kapadia's diagnostic report does not require merit review because it is irrelevant and immaterial and has no bearing on the issue of causal relationship.¹⁴ Appellant is therefore not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(3).

⁷ *Id.* at § 10.607(a).

⁸ *Id.* at § 10.608(b).

⁹ *P.L.*, Docket No. 18-1145 (issued January 4, 2019); *Helen E. Tschantz*, 39 ECAB 1382 (1988).

¹⁰ *P.L.*, *id.*; see *Mark H. Dever*, 53 ECAB 710 (2002).

¹¹ *P.L.*, *supra* note 9; *Annette Louise*, 54 ECAB 783 (2003).

¹² *S.S.*, Docket No. 18-0647 (issued October 15, 2018).

¹³ See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

¹⁴ *G.C.*, Docket No. 18-0506 (issued August 15, 2018).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3) and thus OWCP properly denied merit review. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹⁵

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 12, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ See *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).